

Date of Hearing: June 27, 2018

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

SB 25 (Portantino) – As Amended June 18, 2018

SENATE VOTE: (vote not relevant)

SUBJECT: Elections: ballot order.

SUMMARY: Revises the order in which contests appear on the ballot. Specifically, **this bill** repeals provisions of law that establish the order of precedence of offices on the ballot and instead makes the following changes:

- 1) Requires local offices and local initiatives and ballot measures to appear first on the ballot, instead of nominees for federal office, and to be listed under the new heading CITY/LOCAL. Requires the following offices to be listed under the heading CITY/LOCAL:
 - a) Mayor;
 - b) Member, City Council;
 - c) Unified School District Board Members;
 - d) High School District Board Members;
 - e) Elementary School District Board Members;
 - f) College District Governing Board Members;
 - g) Other offices in alphabetical order by the title of the office;
 - h) Candidates or nominees to the State Senate;
 - i) Candidates or nominees to the State Assembly;
 - j) Candidates or nominees to the House of Representatives of the United States;
 - k) City local initiatives and ballot measures; and,
 - l) Local school district initiatives and ballot measures.
- 2) Requires district offices and district initiatives and ballot measures to appear second on the ballot. Requires the following to be listed under the heading DISTRICT:
 - a) Directors or trustees for each district in alphabetical order according to the name of the district; and,
 - b) District initiatives and ballot measures.

- 3) Requires county offices and county initiatives and ballot measures to appear third on the ballot and be listed under the heading COUNTY. Requires the following to be listed under the heading COUNTY:
 - a) County Supervisor;
 - b) Sheriff;
 - c) Assessor;
 - d) County Superintendent of Schools;
 - e) County Board of Education;
 - f) Other offices in alphabetical order by the title of the office;
 - g) Judge of the Superior Court;
 - h) County Marshall;
 - i) Members of the County Central Committee; and,
 - j) County initiatives and ballot measures.
- 4) Requires state offices and statewide initiatives and ballot measures to appear fourth on the ballot and be listed under the heading STATE. Requires the following to be listed under the heading STATE:
 - a) Governor;
 - b) Lieutenant Governor;
 - c) Secretary of State;
 - d) Controller;
 - e) Treasurer;
 - f) Attorney General;
 - g) Insurance Commissioner;
 - h) Member, State Board of Equalization;
 - i) Superintendent of Public Instruction (SPI); and,
 - j) Statewide initiatives and ballot measures.
- 5) Requires state judicial offices to appear fifth on the ballot and be listed under the heading, STATE JUDICIAL. Requires the following to be listed under the heading STATE JUDICIAL:

- a) Chief Justice of California;
 - b) Associate Justice of the Supreme Court;
 - c) Presiding Judge, Court of Appeal; and,
 - d) Associate Justice, Court of Appeal.
- 6) Requires the nominees for President and Vice President, to appear last on the ballot, instead of first, and requires the nominees to be listed under the new heading NATIONAL ELECTION, instead of being listed under the heading of PRESIDENT AND VICE PRESIDENT. Requires the following to be listed under the heading NATIONAL ELECTION:
- a) Under the subheading, PRESIDENT and VICE PRESIDENT:
 - i) Nominees of the qualified political parties and independent nominees for President and Vice President;
 - ii) Names of the presidential candidates to whom the delegates are pledged; and,
 - iii) Names of the chairperson of unpledged delegations.
 - b) Candidates or nominees to the United States Senate.

EXISTING LAW:

- 1) Requires every ballot to contain the following:
 - a) The title of each office, arranged to conform as nearly as practical in accordance with existing law;
 - b) The names of all qualified candidates, as specified; and,
 - c) The titles and summaries of measures submitted to the voters.
- 2) Requires the offices on the ballot to be listed in the order detailed below, beginning in the column to the left:
 - a) Under the heading, PRESIDENT AND VICE PRESIDENT (at a Presidential general election): Nominees of the qualified political parties and independent nominees for President and Vice President.
 - b) Under the heading, PRESIDENT OF THE UNITED STATES (at a Presidential primary election): Names of the presidential candidates to whom the delegates are pledged and names of the chairpersons of unpledged delegations.
 - c) Under the heading STATE:
 - i) Governor;

- ii) Lieutenant Governor;
 - iii) Secretary of State;
 - iv) Controller;
 - v) Treasurer;
 - vi) Attorney General;
 - vii) Insurance Commissioner; and,
 - viii) Member, State Board of Equalization.
- (d) Under the heading, UNITED STATES SENATOR: Candidates or nominees to the United States Senate.
- (e) Under the heading, UNITED STATES REPRESENTATIVE: Candidates or nominees to the House of Representatives of the United States.
- (f) Under the heading, STATE SENATOR: Candidates or nominees to the State Senate.
- (g) Under the heading, MEMBER OF THE STATE ASSEMBLY: Candidates or nominees to the Assembly.
- (h) Under the heading, COUNTY COMMITTEE: Members of the County Central Committee.
- (i) Under the heading, JUDICIAL:
- (1) Chief Justice of California;
 - (2) Associate Justice of the Supreme Court;
 - (3) Presiding Justice, Court of Appeal;
 - (4) Associate Justice, Court of Appeal;
 - (5) Judge of the Superior Court; and,
 - (6) Marshal.
- (j) Under the heading, SCHOOL:
- (1) SPI;
 - (2) County Superintendent of Schools;
 - (3) County Board of Education Members;

- (4) College District Governing Board Members;
 - (5) Unified District Governing Board Members;
 - (6) High School District Governing Board Members; and,
 - (7) Elementary District Governing Board Members.
- (k) Under the heading, COUNTY:
- (1) County Supervisor; and,
 - (2) Other offices in alphabetical order by the title of the office.
- (l) Under the heading, CITY:
- (1) Mayor;
 - (2) Member, City Council; and,
 - (3) Other offices in alphabetical order by the title of the office.
- (m) Under the heading, DISTRICT: Directors or trustees for each district in alphabetical order according to the name of the district.
- (n) Under the heading, MEASURES SUBMITTED TO THE VOTERS, ballot measures beginning with state measures.
- 3) Permits county elections officials to vary the order of school, county, city, and district offices and measures in order to allow for the most efficient use of space on the ballot provided that the office of SPI always precedes any school, county, or city office and state measures always precede local measures.
- 4) Permits an elections official, during a presidential primary election, to list county central committees directly after the nominees for President and Vice President, as specified.

FISCAL EFFECT: None. This bill is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

- 1) **Purpose of the Bill:** According to the author:

Recent law prohibits local cities from having standalone elections, forcing city and school district elections to be consolidated with statewide and national election dates. The law was proposed as an effort to boost turnout in local elections. However, it has caused many city councils and school boards to fear it might result in their elections getting lost in cumbersome ballots filled with statewide and national election races and propositions.

After speaking with many concerned mayors and councilmembers in my district I became convinced that featuring local elections first is the fair thing to do. Clearly, voters will go deep into the ballot books to vote for President or Governor so these high-profile elections won't be adversely affected in the same manner that local leaders fear local elections will be affected by the new law.

- 2) **Ballot Content and Form:** Current law requires a ballot to comply with a variety of laws that dictate its form and content. For example, existing law requires a ballot to contain the title of each office, the names of all qualified candidates, as specified, ballot designations, as specified, titles and summaries of measures submitted to voters, and instructions to voters, among other things. In addition, current law requires a ballot to follow certain formatting requirements, such as the order offices must appear on the ballot and font size. While existing law does allow for some flexibility in ballot format, such as allowing a county elections official to make ballot formatting changes to accommodate the limitations of a voting system or vote tabulating device, as specified, most requirements are fairly specific.

This bill makes significant changes to ballot order. In general, this bill reorganizes the ballot order and lists the contests in the following descending order: 1) city and local offices (including the Legislature and United States House of Representatives) and ballot measures; 2) district offices and ballot measures; 3) county offices and ballot measures; 4) statewide offices and ballot measures; 5) state judicial offices; and lastly, federal offices. Additionally, this bill makes changes to the list of contests that are required to be placed under the ballot layout headings. For instance, this bill requires candidates for state Senate and state Assembly and the United States House of Representatives to be listed under the CITY/LOCAL heading.

- 3) **Ballot Formatting Issues:** Under the current ballot order, all initiatives and ballot measures (state and local) are listed together on the ballot under the heading of MEASURES SUBMITTED TO VOTERS, as specified, all school offices are listed together on the ballot under the heading SCHOOL, and all judicial offices are listed together on the ballot under heading of JUDICIAL. This bill significantly changes that order and instead separates these contests. For instance, this bill requires municipal initiatives and ballot measures to be listed under the new heading CITY/LOCAL, district initiatives and ballot measures to be listed under the heading DISTRICT, county initiatives and ballot measures to be listed under the heading of COUNTY, and statewide initiatives and ballot measures to be listed under the heading of STATE. This new ballot layout could be confusing to voters as voters will be required to follow different instructions and complete different tasks as the voter moves through the ballot to vote. Theoretically, a voter could first be asked to vote on a local city council race in which a voter is able to vote for more than one candidate. Next on the ballot a voter could be asked to vote on a state legislative office, such as state Senator or state Assemblymember, in which a voter is instructed to vote for one candidate. And then a voter could be asked to vote "yes or no" on an initiative or ballot measure. Requiring a voter to change tasks and follow different instructions could be confusing. Committee members may wish to consider whether separating these contests is prudent as it may be confusing for voters to follow different instructions multiple times throughout the ballot.

Moreover, this bill mixes voter-nominated offices and non-partisan offices on the ballot. Voter-nominated offices are contests in which any voter, regardless of party preference can vote for any candidate and the top two vote-getters, regardless of party preference, advance

to the general election. Non-partisan offices have no party preference and the candidate that receives majority of the votes will win outright in the primary. The ballot layout changes in this bill will result in voters going back and forth between races with partisan affiliation on the ballot and offices that do not have partisan affiliation. This again could be confusing for voters. Furthermore, this bill does not make any changes to ballot instructions that correspond to the contests listed on the ballot. Current law requires certain instructions to be printed on the ballot for certain contests. In order for elections officials to be in compliance with the ballot layout requirements in this bill, significant changes will need to be made to ballot instructions. Theoretically, this could result in significantly longer ballots and more confusion for voters.

- 4) **Other States:** According to research conducted by the National Conference of State Legislatures (NCSL), the majority of states list federal contests first on the ballot and then list state contests, county contests, and finally local contests and other offices. NCSL's research points out that there are a few variations within this order. For instance, some states list the Governor or other statewide contests after the President. Additionally, the research points out that a handful of states list candidates by political party on the ballot. The research did not, however, find any state that lists local offices and local ballot measures before federal and state offices, as proposed by this bill. Consequently, committee staff is unsure of the effect these changes will have on voter behavior.
- 5) **Voter Fatigue:** Many studies discuss the phenomenon of "voter fatigue" or "ballot drop-off" in which the number of votes cast per office drops consistently as a voter moves down the ballot. For instance, the number of votes cast for president is almost always much greater than the number of votes cast for many candidates for lower statewide elected office (such as lieutenant governor, attorney general, secretary of state, etc.) or other local offices (such as city council). Other studies discuss the advantage of ballot placement and contend that there is an advantage to being listed first on the ballot and that offices in the middle and the bottom of the ballot tend to be given less consideration.

Committee staff, however, is unaware of any studies or research that demonstrates moving local contests first on the ballot will result in reduced drop-off for those races. Furthermore, the author's office has not provided the committee with any evidence that the changes proposed in this bill will reduce ballot drop-off for local offices. Given the lack of information about the effect of placing local contests before federal and state offices, committee members may wish to consider amending the bill to make it a pilot program and require a report to the Legislature on the effect the new ballot layout had on voter turnout for local contests and its effect on drop-off rates.

- 6) **Election Dates and Previous Legislation:** Last session, the Legislature approved and the Governor signed SB 415 (Hueso), Chapter 235, Statutes of 2016, which requires most off-cycle local elections to be consolidated with established statewide elections, with certain exceptions. Specifically, SB 415 prohibited a local government, beginning in January of this year, from holding an election on any date other than a statewide election date if doing so in the past resulted in turnout that is at least 25% below the average turnout in that jurisdiction in the last four statewide general elections, as specified.
- 7) **Arguments in Support:** In support, the City Council of the City of Glendale writes:

Due to the adoption of the California Voter Participation Rights Act (CVPRA), cities have been forced to relinquish their right to hold their own elections and to consolidate their elections with statewide primary and/or general statewide elections. Although the intent of this new law is to boost turnout in local elections, it provides a challenge to local candidates to seek the attention of voters in a cycle where they must compete with larger and better-funded campaigns for other offices. Academic studies have shown that voter interest diminishes the further down the ballot a race appears, and many local jurisdictions, such as cities, school, and college districts fear it might result in their elections getting lost in an already heavy ballot.

SB 25 is a practical move to help ensure local races are not adversely affected by the new state mandate by putting local elections on the ballot first instead of last. We believe this bill works in coordination with the CVPRA to engage voters in local elections, while ensuring that local races and measures are not lost in the statewide and national elections.

8) **Concerns:** The California Association of Clerks and Election Officials outlined the following concerns in their letter:

- **Flexibility for elections officials:** Elections Code 13109(o) currently allows elections officials the flexibility to vary the order of certain contests to allow for the most efficient use of space on the ballot. Under this current provision, many counties move the central committee and county council contests to appear with the presidential contest during a primary election because those are the only two contests that are voted upon by party. Also under this current provision, counties that have multi-card ballots due to language requirements standardize one of their cards that contain county-wide contests (e.g. state propositions, county offices, county measures) so it is common throughout the entire county. Your proposal removes that provision, which could force counties to use multi-card ballots or create many more ballot styles thereby increasing election costs.
- **Voting system limitations:** Not all of the current voting systems used in California are able to easily change the order of the contests on the ballot. This bill, if passed, would have an effective date of January 1, 2019. This effective date may cause counties to be out of compliance, especially those counties looking to replace their voting equipment or looking to become a Voters' Choice Act county and who are waiting for systems to be certified by the Secretary of State or waiting for more certainty regarding financial assistance from the state. At our January meeting, your office and guest speakers indicated that the effective date would be 2020, but that fact is not reflected in either the May 19 or June 22 amendments.
- **Voter education and outreach:** During the January meeting when your office and representatives addressed our committee, we were asked to "promote equality, civic and local political engagement and how civics is taught in schools." As an organization and as elections officials, we certainly do agree with those tenants and in each of our respective counties, we take those tenants

seriously. Our concern with your proposed legislation is not with your attempt to highlight local contests first, or your attempt to mitigate voter fatigue, or your attempt to eliminate the drop off rate on down ticket items. Our concern is that none of your goals will be reached without a robust voter education effort to explain why the order of contests has been changed. Changing the ballot order will cause voter confusion. Voters will call to ask our offices why we sent them ballots without the presidential contest on it because it is "missing." Voters will still not vote all the contests on the ballot because of their various reasons. Placing the presidential contest at the end of the ballot will not necessarily cause drop off rates to decrease, voter fatigue to decrease or local contest awareness to increase simply because the "most voted contest" is the last contest.

- 9) **Previous Legislation:** AB 562 (Holden) of 2015 would have required the office of the SPI to be listed on the ballot under the heading of STATEWIDE EDUCATION, which would have appeared on the ballot immediately after the races for state Assembly. AB 562 was vetoed by Governor Brown who stated in his veto message that, "Just as the Chief Justice is placed with all other judicial candidates -- both local and regional -- on the ballot, it stands to reason that the Superintendent of Public Instruction should be placed with all other educational candidates. The current ballot order has existed with minimal changes for decades, and I don't think there is a good reason to change it now."

REGISTERED SUPPORT / OPPOSITION:

Support

California Contract Cities Association
Cerritos Regional Chamber of Commerce
City of Cerritos
City of Duarte
City of Glendale City Council
City of La Cañada Flintridge City Council
City of Los Angeles
City of Norwalk
City of Pasadena
City of Signal Hill
City of Thousand Oaks
Emily Gabel-Luddy, Mayor, City of Burbank
League of California Cities
Los Angeles County Division of the League of California Cities

Opposition

None on file.

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